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Directive 10-6: Exemption for Student Meals under G.L. c. 64H, s. 6(cc)

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I. Introduction:

This Directive provides guidance on the application of the exemption to the sales tax on meals in G.L. c. 64H, § 6(cc) for “... meals furnished to students by an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;” This exemption applies to both the state and local (as applicable) tax on meals.

II. Directives:

Issue 1: Is a meal furnished to a student of a qualifying educational institution in a cafeteria on the premises of the educational institution exempt when the cafeteria is operated by an independent contractor under contract with the school?

Directive 1: A meal sold to a student of a qualifying educational institution at a cafeteria on the premises of the educational institution is exempt regardless of whether the cafeteria is staffed by school employees or operated by an independent contractor under contract with the school. The meal is exempt whether or not the student has a prepaid meal plan arrangement with the school or pays by cash or credit card. Meals sold to non-students are taxable. If a cafeteria operated by an educational institution or an independent contractor sells meals to students and non-students, the vendor is responsible for collecting sales taxes from non-students, for paying sales taxes on its taxable sales, and for maintaining adequate records of sales.

Issue 2: Is a meal sold to a student of a qualifying educational institution by a franchisee operating a fast food restaurant on the premises of the educational institution exempt?

Directive 2: A meal sold to a student of a qualifying educational institution by a franchisee operating a fast food restaurant physically located on the premises of the educational institution is exempt if the franchisee has contracted to participate in a prepaid meal plan arrangement with the school. The meal is exempt whether the student pays by cash, credit card or uses a prepaid meal plan card. Meals sold to non-students are taxable. If such a franchisee sells meals to students and non-students, the franchisee is responsible for collecting sales taxes from non-students, for paying sales taxes on its taxable sales, and for maintaining adequate records of sales.

Issue 3: Is a meal sold to a student of a qualifying educational institution by an off-campus restaurant exempt?

Directive 3: All meals sold by a restaurant that is not physically located on the premises of the

educational institution ("off-campus restaurant") are taxable, whether or not the restaurant has contracted to participate in a prepaid meal plan arrangement with the school. The restaurant must maintain adequate records of sales.

III. Discussion:

Generally, meals sold on its premises by a qualifying educational institution to its students are exempt from the sales tax on meals. G.L. c. 64H, § 6(cc) and LR 83-101.

In *Araserve, Inc. v. Commissioner of Revenue*, Appellate Tax Board, Docket No. 223254 (1998), the ATB found that sales and use tax exemptions apply to purchases made by agents of exempt entities. Under the facts of that case, an agency relationship existed because the educational institution directed and supervised the party operating and managing the institution's cafeteria. Thus, the agent was able to purchase supplies using the institution's exemption under G.L. c. 64H, § 6(e). See TIR 99-4. Under such an arrangement, sales of meals to students at the cafeteria would also qualify for the exemption in G.L. c. 64H, § 6(cc).

A franchisee operating a fast food restaurant on property of an educational institution that has entered into a contractual agreement with the institution to accept payments from a prepaid meal plan will be presumed to be furnishing meals to students on behalf of the educational institution within the meaning of G.L. c. 64H, § 6(cc), regardless of whether the student pays by cash, credit card, or uses a prepaid meal plan card. However, such a contractual agreement will not generally result in the franchisee being considered an agent when making purchases for purposes of the exemption under G.L. c. 64H, § 6(e). Unlike the situation in *Araserve*, a franchisee is operating under the immediate direction and control of the franchisor rather than an exempt entity. See, generally, *Jan Co. Cent, Inc. v. Commissioner of Revenue*, 544 N.E.2d 586, 405 Mass. 686 (1989), regarding taxable purchases of supplies by a restaurant.

Off-campus restaurants do not qualify for the G.L. c. 64H, § 6(cc) exemption because the exempt meals must be served "at the place where ... educational activities are regularly carried on." For purposes of this TIR, a restaurant will be considered to serve meals at the place where educational activities are regularly carried on if it is physically located in a building owned by or leased from the educational institution that is on the campus where the educational activities take place.

/s/Navjeet K. Bal
Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:ecl

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